

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TROY MCRAE

Plaintiff,

**9:14-cv-783
(GLS/TWD)**

v.

C.O. GENTILE, et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

TROY MCRAE
Plaintiff *Pro Se*
06-A-3212
Southport Correctional Facility
P.O. Box 2000
Pine City, New York 14871

FOR THE DEFENDANTS:

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
Litigation Bureau
The Capitol
Albany, New York 12224

CATHY Y SHEEHAN
Assistant Attorney General

**Gary L. Sharpe
District Judge**

ORDER

The above-captioned matter comes to this court following a Report and Recommendation by Magistrate Judge Therese Wiley Dancks, duly filed on October 20, 2015. (Dkt. No. 53.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Report and Recommendation for clear error, it is hereby

ORDERED that the Report and Recommendation (Dkt. No. 53) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 43) for failure to state a claim is GRANTED with leave to amend as to Defendant CO McConnell and Defendant Superintendent Graham in his personal capacity; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 43) for failure to state a claim is GRANTED without leave to amend as to Defendant Superintendent Graham in his official capacity; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 43) for

failure to state a claim is DENIED as to Defendant CO Peters and Defendant CO Gifford; and it is further

ORDERED that the clerk of the court serve a copy of this order upon the parties in accordance with this court's local rules.

IT IS SO ORDERED.

November 18, 2015
Albany, New York

Gary L. Sharpe
Gary L. Sharpe
U.S. District Judge